## STATE OF ILLINOIS ILLINOIS COMMERCE COMMISSION

IN RE: ENBRIDGE PIPELINES	)		
(ILLINOIS) L.L.C.	)		
	)		
Application pursuant to Sections 8-503, 8-509	)		
and 15-401 of the Public Utilities Act - the	)	DOCKET NO:	07-0446
<b>Common Carrier by Pipeline Law to Construct</b>	)		
and Operate a Petroleum Pipeline and when	)		
necessary, to Take Private Property as	)		
Provided by the Law of Eminent Domain.	j		

## REPLY TO ENBRIDGE'S RESPONSE TO SHELBY INTERVENORS' MOTION FOR ORAL ARGUMENT

NOW COME Shelby Coal Holdings, LLC, Fayette Coal Holdings, LLC and Marion Coal Holdings, LLC ("Shelby Intervenors"), and for their Reply to Enbridge's Response to Shelby Intervenors' Motion for Oral Argument, state as follows:

- 1. Enbridge inappropriately suggests that the Shelby Intervenors ignore or undermine the Commission's freedom from the strictures of *res judicata*; they do not take this position. This latitude does not, however, insulate the Commission's Order from judicial scrutiny. The Proposed Order frankly acknowledges that its expansive definition of "public need" constitutes a change in approach. Enbridge's position appears to usurp the Commission's role in determining the scope of the "flexibility" endorsed by the Appellate Court.
- 2. Enbridge's self-serving characterization of Shelby Intervenors' grounds for oral argument as "not ... of such importance that the Commission should waste its time and valuable resources" likewise constitutes an arrogant attempt to speak for the Commission; while Enbridge may find the serious work of determining "public need" a waste of time, the Commission has not generally refused oral argument because of the opponent's professed desire to help the Commission with efficient docket management.
- 3. Finally, Enbridge's unprofessional and vitriolic description of Shelby Intervenors'

  Motion as "the whining of parties that are perturbed that the Proposed Order reached

conclusions opposite of those they presented" lacks merit. While the Proposed Order indeed

rejects Shelby Intervenors' arguments, the Administrative Law Judge nowhere criticized Shelby

Intervenors' positions or evidence, and observed that "... the Commission is faced with

choosing between two somewhat polar positions, neither of which is without merit."

4. Enbridge's position regarding the practical hurdle to obtaining eminent domain

ignores the real world consequences of a "public need" determination; once "public need" is

determined, eminent domain becomes a more likely outcome. Shelby Intervenors do not claim

that a finding of public need "automatically trigger[s]" a grant of eminent domain, but have

pointed out, as Enbridge's predecessor admitted, a finding of "public need" from the applicant's

perspective, is sought for the sole purpose of achieving leverage in negotiations with property

owners.

5. Granting Shelby Intervenors' Motion for Oral Argument is in the best interest of

the public and the Commission.

WHEREFORE, Shelby Coal Holdings, LLC, Fayette Coal Holdings, LLC and Marion

Coal Holdings, LLC (Shelby Intervenors), respectfully pray that the Commission reject

Enbridge's opposition to Shelby Intervenors' Motion for Oral Argument.

Shelby Coal Holdings, LLC, Fayette Coal Holdings, LLC and Marion Coal Holdings, LLC, (Shelby

Intervenors),

By: \_\_\_\_\_\_/s/ Scott C. Helmholz

**One of Their Attorneys** 

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## **CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing **Reply to Enbridge's Response to Shelby Intervenors' Motion for Oral Argument** was electronically served with the Illinois Commerce Commission and served upon the following persons by electronic transmission or via U.S. Mail:

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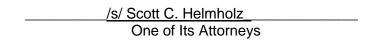
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